IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.48741 of 2006
GUNANAND PRASAD @ GUNANAND SAH
Versus
STATE OF BIHAR & ANR

For the petitioner : Mr. Ashok Kumar Mishra, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P. No. : Mr. S.N.P.Sinha, Sr. Advocate &
Mrs. Reena Sinha, Advocate

O R D E R

The petitioner a dealer under the Public Distribution System has filed this application for quashing the malicious and fabricated prosecution through Rosera P.S. Case No. 104 of 2006 so far as it relates to the petitioner wherein allegation are made in respect of constituting offence under section 7 of the Essential Commodities Act (hereinafter referred to as "the E.C. Act").

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The prosecution case is based on the written information submitted by one Ghanshyam Mishra, impleaded herein as O.P. No. 2 which was to the effect inter alia that on 23.7.2006 at about 10.30 A.M. while he was going to the shop of the petitioner for purchasing kerosene oil he saw an unknown person carrying two jerrycans on his cycle containing 40 liters of kerosene oil in each and on the informant inquiring from him as to how he had procured the said oil, the cyclist attempted to conceal his identity and on the arrival of villagers,

who have been named in the written information, and on pressure being applied by them the said person disclosed his name as Vijay Kumar Lal who along with the jerrycans with the kerosene oil was later on handed over to the police with a request to take legal action.

It has been submitted on behalf of the petitioner that he being a dealer under the Public Distribution System is exempted from prosecution in view of the provisions of Clause 31(2) of the Bihar Trade Articles (Licenses Unification) Order, 1984, as he was deemed to be an agent of the Government and secondly that it had not been stated that as to what Order made under section 3 of the E.C. Act had been violated.

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There appears sufficient force in the arguments advanced by the learned counsel for the petitioner. A catena of decisions of this Court have held that dealers under the Public Distribution System are not amenable to prosecution in view of the provisions of Clause 31(2) of the Unification Order.

It has also been held by several decisions of this Court that Section 7 of the E.C. Act deals with the persons who contravene any Order made under section 3 of the E.C. Act but if there is no contravention of any Order then no criminal case can be launched against that person. Admittedly, the informant in

the written report does not state as to what Order made under section 3 of the E.C. Act has been deemed to have been violated.

Due regard being had to the facts and the circumstances of the case, the entire criminal prosecution amounts to an abuse of the process of the court. Accordingly, the entire criminal proceeding, so far as the petitioner is concerned, is hereby quashed and the application is allowed.

Patna High Court, Patna.
Dated : The 20th of August, 2008
Sanjay Pd./A.F.R.

(Abhijit Sinha, J.)

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